THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 8352 of 1999

Date 02.09.2005

Between:

Jogi Nagulanna.

..... PETITIONERS

AND

The A.P.S.R.T.C., Rep by its Managing Director,
Musheerabad, Hyderabad & others.

.....RESPONDENTS

**THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

**WRIT PETITION No.8352 of 1999**

**O R D E R:**

The action of the respondents, in not considering the case of the petitioners for appointment to the post of cleaners, is challenged in this writ petition, as arbitrary and illegal. A consequential direction is sought to appoint the petitioners as cleaners without insisting on the upper age limit.

Facts to the extent necessary for the purpose of this writ petition are as follows:

The first petitioner, who belongs to Schedule Caste Community, passed S.S.C. and completed I.T.I. with Diesel Mechanic training from 01.08.1980 to 23.07.1981. He underwent practical Training as apprentice in Kadapa Zone from 03.04.1991 to 04.04.1993 i.e., for a period of two years. The second petitioner, who belongs to B.C (B) Community, passed S.S.C. and completed I.T.I. with Diesel Mechanic training from 01.08.1980 to 23.07.1981. He underwent practical Training as apprentice in Krishna Devaraya Region, at Rayachoti Depot from 08.04.1991 to 07.04.1993 i.e., for a period of two years. The second petitioner filed W.P.No.34536 of 1997, which was disposed of by this Court on 24.12.1997 directing the respondents to consider his case. The second respondent, issued proceedings dated 04.08.1996, informing the second petitioner that his seniority is at Sl.No.82 and that his case will be considered as per his turn. Selections were conducted by the second respondent in December, 1998, for the post of cleaner. However, both the petitioners were not called for the interview. A fresh notification was issued inviting applications for filling up vacancies of cleaners, pursuant to which the petitioners submitted their applications on 05.03.1999. Petitioners contend that, though they completed apprenticeship with respondent-Corporation in April, 1993, they were not selected under the quota fixed for candidates who had undergone apprenticeship. It is contended that prescription of an upper age limit, in the light of the fact that no selections were held during the period 1993-1998, is arbitrary inasmuch as by the year 1998 the petitioners, for no fault of theirs, had become overaged.

Reliance is placed on the judgment of the Supreme Court in U.P.S.R.T.C. Vs. U.P.PARIVAHAN NIGAM, wherein it has been held thus:

> "In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training :-
>
> (1) Other things being equal, a trained apprentice should be given preference over direct recruits.
>
> (2) For this,a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India v.Hargopal, AIR 1987 SC 1227, would permit this.
>
> (3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in this concerned service rule. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.
>
> (4) The concerned training institute would maintain a list of the persons trained year wise. The persons trained earlier would be treated as senior to the persons trained later. In between the
>
> trained apprentices, preference shall be given to those who are senior.

Though it is contended in the affidavit filed in the support of the writ petition, that the age bar should be relaxed in favour of apprentices at least for the period to which they have undergone apprenticeship. It is fairly conceded by Sri V.Viswanatham, learned counsel for the petitioners, that while the apprenticeship of both the petitioners herein was two years, the respondent-Corporation had given age relaxation for apprentices for a period of four years. It is, however, contended that this relaxation of four years for apprentices is not sufficient, as the failure of the respondent-Corporation to conduct selections, during the period 1993-1998, had resulted in the petitioners being overaged and that for the fault of the Corporation, in not conducting selections, the petitioners cannot be penalized. While this submission seems attractive, it is also to be borne in mind that it is for the respondent-Corporation, based on its requirements, to decide as to when it should conduct selections or fill up available vacancies. No Mandamus would normally be issued by this Court directing the respondents to conduct selections to fill up such vacancies. These

are all matters for the Corporation, in its wisdom, to decide and not for this Court to determine in proceedings under Article 226 of the Constitution of India.

Sri V.Viswanatham, learned counsel for the petitioners, would submit that Regulation 9 of the A.P.S.R.T.C. Employees (Recruitment) Regulations, 1966 (for short 'Regulations') provides for relaxation of age limit. Regulation 9 (1) reads as under:

> "Notwithstanding anything in these Regulations, a competent authority may, in exceptional circumstances for reasons to be recorded in writing, make an order exempting any person or class of persons from the age limit prescribed therein."

Relying on this clause, learned counsel would submit that power has been conferred on the competent authority, the Vice-Chairman-cum-Managing Director, in the present case, in exceptional circumstances and for reasons to be recorded in writing, to pass an order exempting any person or class of persons from the age limit prescribed therein. Learned counsel would submit that a Mandamus be issued by this Court to the Vice-Chairman-cum-Managing Director to exercise his discretionary powers under Regulation 9(1) of the Regulations insofar as the age of the petitioners are concerned and that they be appointed as cleaners in the respondent-Corporation. Learned counsel would place reliance on the judgment of this Court in W.P.No.14853 of 1997 dated 01.04.1998, wherein this Court, following the judgment of the Supreme Court in U.P.S.R.T.C.'s case (1 supra) and relying on Regulation 9 of the Regulations, directed the Vice-Chairman-cum-Managing Director to consider the case of the petitioner for relaxation of the age limit, in terms of Regulation 9 of the Regulations and in the light of the guidelines issued by the Supreme Court in paragraph 12 of the judgment in U.P.S.R.T.C.'s case (1 supra).

The said judgment, in W.P.No.14853 of 1997, dated 01.04.1998 has no application to the facts of the present case. The Supreme Court, in U.P.S.R.T.C.'s case (1 supra), had merely directed that age relaxation should be provided to the extent of the period for which an apprentice had undergone training. In the case on hand, the period of apprenticeship undergone by the petitioners is two years whereas the respondent-Corporation has given relaxation of four years, in age, for candidates who had undergone apprentice

training with the respondent-Corporation. The judgment in W.P.No.14853 of 1997, does not reflect any such age relaxation having been given by the respondent-Corporation for the period which candidates had undergone apprenticeship training and it is in such circumstances, and in view of the law laid down by the Supreme Court in U.P.S.R.T.C.'s case (1 supra), that this Court had directed the respondent-Corporation to exercise its discretionary powers under Regulation 9 of the Regulations read with the guidelines issued in U.P.S.R.T.C.'s case (1 supra). Since the question which arises for consideration, in the present writ petition, is whether a Mandamus can be issued to the Vice-Chairman-cum-Managing Director to exercise his discretion, under Regulation 9, despite the guidelines prescribed in U.P.S.R.T.C.'s case (1 supra), having been followed by the respondent-Corporation, the judgment in W.P.No.14853 of 1997 has no application to the facts of the present case.

Regulation 9(1), confers powers on the competent authority to exercise his discretion in exceptional cases and not as a matter of course. The benefit of age relaxation, if it is so required to be given, should be extended uniformly to a class of persons, in the instant case, for all eligible apprentices. Merely because, petitioners have approached this Court, no direction can be issued to the respondents, to exercise the discretion under Regulation 9, selectively, in favour of the petitioners alone, ignoring the claims of several other apprentices, who, but for the age limit prescribed may also have been eligible for being considered for appointment as cleaners in the respondent-Corporation. No case has been made out necessitating issuance of a writ to the respondents, to exercise the discretion under Regulation 9 in a particular manner.

The writ petition fails and is accordingly dismissed. There shall be no order as to costs.

_____

02.09.2005

usd